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6 BEFORE THE WASHINGTON STATE  
7 OFFICE OF THE INSURANCE COMMISSIONER

8 IN THE MATTER OF THE  
9 APPLICATION REGARDING THE  
10 CONVERSION AND ACQUISITION  
11 OF CONTROL OF PREMIER BLUE  
12 CROSS AND ITS AFFILIATES,

No. G02-45

DECLARATION OF BARBARA FLYE

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WASHINGTON CITIZEN ACTION,  
WELFARE RIGHTS ORGANIZING  
COALITION, AMERICAN LUNG  
ASSOCIATION OF WASHINGTON,  
NORTHWEST FEDERATION OF  
COMMUNITY ORGANIZATIONS,  
NORTHWEST HEALTH LAW  
ADVOCATES, SERVICE EMPLOYEES  
INTERNATIONAL UNION  
WASHINGTON STATE COUNCIL,  
THE CHILDREN'S ALLIANCE,  
WASHINGTON ACADEMY OF  
FAMILY PHYSICIANS,  
WASHINGTON ASSOCIATION OF  
CHURCHES, WASHINGTON  
PROTECTION AND ADVOCACY  
SYSTEM AND WASHINGTON STATE  
NOW,

Applicants for Intervention.

1 I, Barbara Flye, declare:

2 1. I am the Executive Director of Washington Citizen Action (WCA).  
3 I have been director of WCA since January 1999.

4 2. WCA is a statewide, grassroots lobbying organization, with over  
5 50,000 members across the state. It is the largest consumer advocacy organization in  
6 Washington State. Its members include low and moderate-income residents of  
7 Washington State, many of whom have a particular stake in improving access to health  
8 care. Numerous WCA members are people with disabilities or chronic health  
9 conditions whose lives depend on having adequate access to affordable health care.  
10 Many of WCA members are unable to access health insurance through the employer-  
11 based system and must purchase insurance through the individual market or, if they  
12 are low-income, through the Basic Health program. WCA has many members who are  
13 eligible for Medicaid and have coverage through Healthy Options, Washington's  
14 Medicaid managed care program. Finally, WCA has members who also receive their  
15 health care coverage through the individual, small and large group health insurance  
16 markets.

17 3. Because health care access is an issue of primary importance to its  
18 members, WCA and has been a leader on advocating for access to health care since its  
19 founding in 1990. WCA has spearheaded numerous health care access campaigns and  
20 brought together coalitions representing health care consumers, providers, and  
21 workers. As a result of WCA's health care campaigns, health care consumers in  
22 Washington State benefit from patient protections in managed care, more reasonable  
23 rates in the individual insurance market, and continued access to publicly funded  
24 programs such as Medicaid and Basic Health. WCA is also leading the fight to secure  
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1 more reasonable drug pricing from prescription drug manufacturers and access to  
2 prescription drugs for uninsured or underinsured health care consumers.

3 4. Since the mid-1990s, WCA has monitored health care conversions  
4 and advocated for community interests when health care entities have proposed or  
5 entered into health care conversion transactions. As a result of its longstanding  
6 conversion work in Washington State, WCA has become the leading consumer expert  
7 on conversions and their potential impacts on access to health care.

8 5. In 1997 and 1998, WCA was instrumental in the passage of SB  
9 5227, which ensures the protection of nonprofit assets held by hospitals in the event of  
10 hospitals' conversion to for-profit. The legislation passed unanimously in the Senate  
11 and overwhelmingly in the house and, today, Washington's Hospital Conversion law  
12 stands as one of the most comprehensive in the country.

13 6. WCA was also involved in the conversion of PACC Health Plans  
14 and Health Maintenance Organization in 1997. WCA participated in an Oregon public  
15 hearing and submitted testimony to urge the inclusion of the people of southwest  
16 Washington state in the mission, purposes and potential beneficiaries of the Northwest  
17 Health Foundation, the foundation formed as a result of the conversion of PACC.

18 7. Growing out of its work on health conversions, WCA and  
19 Northwest Federation of Community Organizations (NWFCO) turned to an  
20 examination of the role and commitment of nonprofit health corporations to their local  
21 communities. The organizations launched a project focusing on defining and  
22 expanding the community benefits provided by nonprofit health corporations. As part  
23 of its efforts, WCA intervened in the Certificate of Need process when a local Tacoma  
24 hospital was taken over by an out of state corporation in order to obtain new  
25 commitments to provide the community with increased charity care and other services.

1 WCA also negotiated with the Sisters of Providence and Swedish Health Systems  
2 during their recent merger to obtain commitments from both organizations regarding  
3 increased community benefits. WCA also surveyed the charity care procedures of  
4 hospitals around the state, and issued a report entitled Not Making the Grade:  
5 Washington Nonprofit Hospitals Fail in Their Charity Care Mission. Since then, WCA  
6 has worked with legal services offices to address the provision of charity care and  
7 community benefits to low-income health consumers.

8           8. In March 2001, when Regence BlueShield announced its plans to  
9 “affiliate” with Health Care Service Corporation (HCSC) of Illinois, WCA rallied  
10 consumer and provider groups from Washington, Oregon, and Idaho to call for  
11 scrutiny of the proposed transaction and protection of the nonprofit health services  
12 provided by Regence and the nonprofit assets held by the company. WCA worked  
13 with legal experts to analyze the proposal and point out how it would have resulted in  
14 a transfer of control over Regence to HCSC, with no provision for the required  
15 charitable set-aside. In the face of consumer opposition and regulatory scrutiny, the  
16 deal between Regence and HCSC fell apart.

17           9. WCA has worked to improve the legal framework relating to  
18 health care conversions, advocating for a similar conversion statute for health plans, to  
19 the one in place for Washington hospitals. In January 2001, WCA commented on SB  
20 5111, which would have amended the Insurance Code with regard to the protection of  
21 nonprofit assets and the conversion of health care service contractors and health  
22 maintenance organizations. In its testimony, WCA called for the protection of  
23 nonprofit assets through the creation of a nonprofit foundation dedicated to addressing  
24 the unmet health care needs of Washington residents.

1           10.     WCA has also been a leader on numerous other health care access  
2 and health insurance issues. WCA was a leader in the effort to pass the Health Care  
3 Reform Act of 1993, and fought to prevent its rollback in 1995 and 1999. WCA has also  
4 worked to oppose efforts to roll back consumer protections in the individual health  
5 insurance market and to use restrictive underwriting to keep people with expensive  
6 health care needs out of the individual market.

7           11.     In 1999, WCA organized a coalition of over 35 organizations to  
8 advocate for passage of the Patient Bill of Rights in Washington. This bill was passed  
9 and signed into law by Governor Locke on March 15, 2000. It benefits health plan  
10 enrollees across the state, protecting them against abuse and arbitrary decision-making  
11 by health carriers.

12           12.     WCA has been concerned with the individual health insurance  
13 market since the 1990s, and has closely monitored access to individual products since  
14 the individual market reform in 2000. WCA attends meetings of the Washington State  
15 Health Insurance Pool (WSHIP), or high-risk pool, to monitor developments in the  
16 individual market screening system, rate-setting, and other access issues.

17           13.     Based upon my knowledge and belief, WCA members include  
18 Premera enrolled participants, such as individuals who are enrolled in Premera  
19 through Medicaid Healthy Options, the Basic Health Plan, the individual insurance  
20 market and through the benefits provided to public and private employees.

21           14.     Based upon information and belief, some of WCA's members are  
22 enrolled in Premera through Healthy Options. All of WCA's members who are  
23 enrolled in Healthy Options, whether they choose Premera or another health carrier,  
24 will be significantly impacted by the Premera conversion if the transaction results in  
25 changes to Premera's involvement in the Medicaid Healthy Options program.

1           15.     Healthy Options is a Washington state § 1915(b) Medicaid waiver  
2 program that permits the state to require some Medicaid recipients, typically parents  
3 and children, to enroll in managed care coverage with private, contracting health  
4 carriers. Healthy Options helps to ensure that Medicaid consumers have the same  
5 access to health care providers as other kinds of consumers. Under Healthy Options,  
6 Premera is responsible for ensuring access to covered care for Premera Healthy  
7 Options participants. Before Healthy Options, many Medicaid consumers, especially  
8 people in rural areas, had difficulty finding health care providers who would accept  
9 Medicaid coverage. Many Medicaid consumers would have to drive long distances,  
10 and experience long waits to get care. Healthy Options helps to solve this specific  
11 access to health care barriers faced by Medicaid.

12           16.     Because Healthy Options requires mandatory enrollment of some  
13 Medicaid consumers, waiving those Medicaid consumers' "freedom of choice" under  
14 42 USC 1396a(23), the federal government requires Washington state to ensure that  
15 Healthy Options participants always have a choice of at least two health carriers. If  
16 there is only one available health carrier, Healthy Options enrollees may be forced to  
17 give up their managed care enrollment, and lose the enhanced access to health care  
18 they experience in Healthy Options. Medicaid consumers in Yakima, Snohomish, and  
19 other counties experienced this loss when Regence BlueShield pulled out of the  
20 Healthy Options program in 2001.

21           17.     In a number of counties, Premera is one of only two health carriers  
22 participating in Healthy Options. These include: Ferry, Pend Oreille, and Stevens  
23 Counties. Premera is the only health carrier offering Healthy Options in Kittitas and  
24 Pacific Counties. If, after conversion, Premera withdrew from any of these counties,  
25 the Healthy Options program in those counties would be jeopardized. Accordingly,  
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1 Premera's continued participation in the Healthy Options program is critical for  
2 ensuring adequate access to health care through Healthy Options for many WCA  
3 members.

4 18. Based upon information and belief, some WCA members are  
5 enrolled in the Basic Health program (BHP). BHP provides state subsidized private  
6 health coverage to low-income individuals and families who are not eligible for  
7 Medicaid. Premera also participates in the BHP, and is the only plan participating in  
8 BHP in Asotin, Garfield, and Kittitas Counties. Any changes in Premera's participation  
9 in the BHP as a result of the proposed conversion will impact WCA's BHP members,  
10 whether they are enrolled in Premera or another plan.

11 19. Many WCA members are covered by Premera through employer-  
12 sponsored or individual market coverage. For example, James Ellison is a Washington  
13 Citizen Action member who battled with Premera over coverage of a stem cell  
14 transplant, which it deemed "experimental" and refused to authorize.

15 20. WCA's members have a significant interest in the conversion of  
16 Premera to "for-profit" because the transaction could have serious implications on  
17 market conditions. It could drive up prices and possibly limit access to healthcare for  
18 WCA members, their families, and their communities. It also could have implications  
19 for the providers and hospitals used by WCA members in terms of reduced  
20 reimbursement for costs and therefore the amount and quality of services provided. As  
21 a result, WCA has a significant interest in the outcome of Premera Blue Cross's  
22 application for conversion on cost and access to healthcare.

23 21. WCA's members have a significant interest in the protection and  
24 management of the Premera's assets if such an application for conversion were to be  
25 approved. WCA's members are beneficiaries of the nonprofit assets held by Premera  
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1 Blue Cross. Many other of WCA's members are uninsured or underinsured, or have  
2 serious chronic health care conditions, and my significantly benefit from the creation of  
3 a health foundation dedicated to addressing unmet health care needs in Washington  
4 state. WCA members may be one of the main constituencies served by any foundation  
5 formed as a result of the conversion. WCA members have a significant interest in  
6 ensuring that Premera fully divests itself of all the nonprofit assets it holds, and that it  
7 relinquishes all control of those assets as part of the conversion. WCA members are  
8 opposed to the use of the proceeds from the conversion for lobbying or other activities  
9 on behalf of the interests of health insurers.

10 22. Washington Citizen Action, together with the other ten consumer  
11 and provider groups that have jointly intervened, intends to conduct an analysis of the  
12 health impact of the Premera conversion. WCA and the other ten groups will need to  
13 be provide sufficient access to discovery in order to conduct the health impact analysis  
14 and evaluation necessary to protect the public's interest in the conversion of Premera.

15 I declare under penalty of perjury of the laws of the State of Washington  
16 that the foregoing is true and correct.

17 DATED this \_\_\_\_ day of November, 2002, at Seattle, Washington.

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20 Barbara Flye  
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